

COURT OF APPEALS
DIVISION TWO

¶1 Pursuant to a plea agreement, petitioner Ricardo Longoria was convicted in Cause Nos. CR99-711, CR99-724, and CR00-121 of theft of a means of transportation, armed robbery, kidnapping, aggravated assault, and two counts of escape. The trial court denied relief in his first post-conviction proceeding, brought pursuant to Rule 32, Ariz. R. Crim. P., 17 A.R.S., and on review, this court remanded the case to the trial court, finding it had erred when it found one of Longoria's claims precluded. *State v. Longoria*, No. 2

CA-CR 01-0290-PR (memorandum decision filed Jan. 8, 2002). After an evidentiary hearing, the trial court denied relief, as did this court on review. *State v. Longoria*, No. 2 CA-CR 2002-0359-PR (memorandum decision filed Oct. 28, 2003). In this petition for review, Longoria challenges the trial court's order denying his request to set aside the convictions because his conviction in another case was vacated. We will not disturb a trial court's order denying relief absent an abuse of discretion. *State v. Schrock*, 149 Ariz. 433, 441, 719 P.2d 1049, 1057 (1986).

¶2 In September 2000, when Longoria entered his guilty pleas in these causes, he stood convicted of escape in CR99-712 for failing to appear at another proceeding. It appears that, in July 2003, the conviction in CR99-712 was set aside on the ground that perjured testimony had been presented at that trial. In this case Longoria then filed a notice of post-conviction relief in February 2004, and appointed counsel filed a petition for post-conviction relief in December 2005, in which Longoria claimed he never would have entered the guilty pleas in these causes had there been no previous conviction in CR99-712. He also asserted in his affidavit that he had been coerced into entering the guilty pleas because his girlfriend would be indicted if he did not do so.

¶3 The trial court held an evidentiary hearing in May 2006. Longoria did not testify because he had engaged in disruptive behavior while being transported to the courtroom for the hearing, and the trial court deemed him dangerous. Although the court denied Longoria's motion for a continuance of the hearing, it permitted his attorney to state what Longoria would have said had he been present. And, as counsel and the court noted, the court had before it Longoria's affidavit and a letter. Counsel who had represented

Longoria at the time he pled guilty in these cases testified, essentially, that Longoria had understood the terms of the agreement; that the two had discussed the strength of the evidence against him, including the fact that the escape had been committed in open court; and that there was strong forensic evidence supporting the burglary charge. When counsel was asked about CR99-712 and any effect the conviction in that case had had on Longoria's decision to enter the guilty pleas, counsel stated he could not recall that case at all. Counsel stated he could not recall having had any discussion with Longoria about that other case.

¶4 Relying to a large extent on the transcript of the change-of-plea hearing, the prosecutor argued strenuously that Longoria's guilty pleas in these cases were knowing, voluntary, and intelligent and did not relate at all to CR99-712. The prosecutor noted the care with which the trial court had assured the record showed the pleas were knowing, voluntary, and intelligent and in complete compliance with *Boykin v. Alabama*, 395 U.S. 238, 89 S. Ct. 1709 (1969). The prosecutor further noted that the conviction in CR99-712 was not among the prior felony convictions Longoria had admitted he had.

¶5 After taking the matter under advisement to consider the transcript of the May 2006 Rule 32 hearing, which it later stated it had reviewed, and after considering correspondence from Longoria, the trial court denied Longoria's request for post-conviction relief, finding his argument about the purported significance of the conviction in CR99-712 to be "disingenuous on its face." The court added that Longoria had been given "the benefit of his bargain" and had failed to establish a basis for relief. Thus, the trial court's order clearly addressed the claims raised, permitting our review, and resolved the claims correctly,

given the record before the court. *See State v. Whipple*, 177 Ariz. 272, 274, 866 P.2d 1358, 1360 (App. 1993).

¶6 Longoria has not sustained his burden on review of establishing that the trial court abused its discretion when it ruled on his petition, given the record before us. The only context within which CR99-712 was mentioned during the change-of-plea proceeding was the trial court's noting the concurrent prison terms in CR99-711 and CR00-121 would be concurrent with the sentence to be imposed in CR99-712. As the state points out in its response to the petition for review, even assuming the conviction in CR99-712 played any part in Longoria's thought process as he decided whether to enter the guilty pleas, that the outcome of that conviction changed in his favor after he entered knowing, voluntary, and intelligent pleas in these causes is of no moment with respect to the question of the validity of those pleas. *Cf. State v. Laurino*, 106 Ariz. 586, 588, 480 P.2d 342, 344 (1971) ("The rule that a plea must be intelligently made to be valid does not require that a plea be vulnerable to later attack if the defendant did not correctly assess every relevant factor entering into his decision."). We adopt the trial court's ruling. *See Whipple*, 177 Ariz. at 274, 866 P.2d at 1360.

¶7 The petition for review is granted, but relief is denied.

CONCURRING:

JOHN PELANDER, Chief Judge

JOSEPH W. HOWARD, Presiding Judge

GARYE L. VÁSQUEZ, Judge